

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT MEEKER and AMY  
MEEKER, individually, the marital  
community comprised thereof, and on  
behalf of C.M., a minor,

Plaintiffs,

v.

STARFISH CHILDREN'S  
SERVICES, PATRICK  
McLAUGHLIN and CYNTHIA  
McLAUGHLIN and the marital  
community comprised thereof,  
MICHAEL BOSMANN and LISA  
ANN BOSMANN and the marital  
community comprised thereof, and  
JANE DOES 1-2,

Defendants.

CASE NO. C17-376 RAJ

ORDER

This matter comes before the Court on Defendants Michael and Lisa Ann  
Bosmann's motion to dismiss. Dkt. # 20. Plaintiffs do not oppose the motion as to Ms.

1 Bosmann but do so as to Mr. Bosmann. Dkt. # 25<sup>1</sup>. Therefore, the Court **GRANTS** the  
2 motion as to Ms. Bosmann and **GRANTS in part and DENIES in part** the motion as to  
3 Mr. Bosmann.

#### 4 **I. BACKGROUND**

5 The following is taken from Plaintiffs' Complaint, which is assumed to be true for  
6 the purposes of this motion to dismiss. *Sanders v. Brown*, 504 F.3d 903, 910 (9th Cir.  
7 2007).

8 Plaintiffs adopted C.M. from a foster home in China run by Starfish Children's  
9 Services ("Starfish"). *See generally* Dkt. # 1 (Complaint). Plaintiffs learned that C.M.  
10 suffered from spina bifida, which "limited her physical, cognitive, behavioral, and social  
11 abilities." *Id.* at ¶ 3.03. Plaintiffs were familiar with adopting children with special  
12 needs, and therefore were not dissuaded from adopting C.M. with knowledge of her spina  
13 bifida. *Id.* However, upon arriving in China to pick up C.M. and bring her home to the  
14 U.S., Plaintiffs realized that C.M. might have medical issues beyond the spina bifida. *Id.*  
15 at ¶ 3.04.

16 Plaintiffs sought information from Starfish to learn the extent of C.M.'s health  
17 issues but received few answers. *Id.* at ¶ 3.07. After engaging several health  
18 practitioners, Plaintiffs were informed that C.M. suffered from epilepsy, severely rotten  
19 teeth, hydrocephalus, cerebral palsy, scoliosis, brain cerebella dysplasia, self-harm,  
20 blindness, deafness, sleep troubles, and hepatitis C. *Id.* Plaintiffs soon learned that C.M.  
21 would have a much shorter lifespan than they were prepared to accept. *Id.*

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24 <sup>1</sup> The Court strongly disfavors footnoted legal citations. Footnoted citations serve as an end-run  
25 around page limits and formatting requirements dictated by the Local Rules. *See* Local Rules W.D. Wash.  
26 LCR 7(e). Moreover, several courts have observed that "citations are highly relevant in a legal brief" and  
27 including them in footnotes "makes brief-reading difficult." *Wichansky v. Zowine*, No. CV-13-01208-  
PHX-DGC, 2014 WL 289924, at \*1 (D. Ariz. Jan. 24, 2014). The Court strongly discourages the parties  
from footnoting their legal citations in any future submissions. *See Kano v. Nat'l Consumer Co-op Bank*,  
22 F.3d 899-900 (9th Cir. 1994). **The Court may consider striking any future brief that contains  
excessive footnotes.**

1 Plaintiffs allege that Starfish was aware of C.M.’s health issues beyond the spina  
2 bifida but chose not to disclose the information to Plaintiffs for fear that Plaintiffs would  
3 decide against adopting C.M. *Id.* at ¶¶ 3.08, 3.17-3.19. Plaintiffs have already incurred  
4 more than \$500,000 in medical bills to treat C.M. and expect more bills in the future. *Id.*  
5 at ¶ 3.24.

6 In March 2017, Plaintiffs sued Starfish and its Board of Directors for various  
7 claims arising out of fraud and misrepresentations. *See id.* The Bosmanns—Mr.  
8 Bosmann was a member of Starfish’s Board—are now before the Court seeking dismissal  
9 of the claims asserted against them.

## 10 **II. LEGAL STANDARD**

11 Fed. R. Civ. P. 12(b)(6) permits a court to dismiss a complaint for failure to state a  
12 claim. The rule requires the court to assume the truth of the complaint’s factual  
13 allegations and credit all reasonable inferences arising from those allegations. *Sanders*,  
14 504 F.3d at 910. A court “need not accept as true conclusory allegations that are  
15 contradicted by documents referred to in the complaint.” *Manzarek v. St. Paul Fire &*  
16 *Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). The plaintiff must point to factual  
17 allegations that “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*  
18 *Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint avoids  
19 dismissal if there is “any set of facts consistent with the allegations in the complaint” that  
20 would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556 U.S. 662, 679  
21 (2009).

22 A court typically cannot consider evidence beyond the four corners of the  
23 complaint, although it may rely on a document to which the complaint refers if the  
24 document is central to the party’s claims and its authenticity is not in question. *Marder v.*  
25 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). A court may also consider evidence subject to  
26 judicial notice. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003).

### III. DISCUSSION

Plaintiffs plead seven causes of action in their Complaint. Dkt. # 1 (Complaint) at ¶¶ 4.01-4.35. The Court will analyze the claims in turn below.

#### A. Wrongful Adoption

##### 1. *Choice of Law*

Plaintiffs bring a wrongful adoption claim, arguing that Defendants induced them into adopting C.M., causing them to incur significant monetary losses. Dkt. # 1 (Complaint) at ¶¶ 4.01-4.06. Mr. Bosmann first argues that Texas law governs this claim, and because Texas does not recognize a wrongful adoption cause of action, this claim fails. Dkt. # 20 at 6. Alternatively, Mr. Bosmann argues that the claim fails under Washington law due to insufficient pleading. *Id.* at 9.

A federal court sitting in diversity applies state substantive law and federal procedural law. *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 427 (1996); *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Because substantive law is at issue, the Court looks to state law. “In determining what state law to apply, a federal court applies the choice-of-law rules of the state in which it sits.” *Kohlrantz v. Oilmen Participation Corp.*, 441 F.3d 827, 833 (9th Cir. 2006). In Washington, courts “first determine whether an actual conflict between Washington and other applicable state laws exists.” *Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 550 (W.D. Wash. 2008). “If an actual conflict exists, the Court must determine the forum or fora that have the ‘most significant relationship’ to the action to determine the applicable law.” *Id.* (citations omitted).

Mr. Bosmann does not cite an actual conflict between Washington and Texas law regarding wrongful adoption claims. Instead, Mr. Bosmann leaps to the second step in the analysis as if the Court could assume that an actual conflict exists. *See* Dkt. # 20 at 7-8. But, based on Mr. Bosmann’s representations, it is unclear whether an actual conflict exists. *See* Dkt. # 20 at 8 (stating that Mr. Bosmann is “unaware of any authority supporting a claim for wrongful adoption under Texas law” because “[c]ases that have

1 surveyed jurisdictions do not identify Texas as a state that recognizes wrongful adoption  
2 claims.”). Moreover, in his reply brief, Mr. Bosmann does not contest Plaintiffs’  
3 contention that Texas would likely recognize a wrongful adoption claim similar to  
4 Washington, thereby eliminating any potential conflict between the states’ laws. *See*  
5 *generally* Dkt. # 27.<sup>2</sup> The Court will not do Mr. Bosmann’s work for him, and if he  
6 chooses not to contest this point, then the Court is inclined to find that, on the record  
7 before it, no actual conflict exists between Washington and Texas law such that the Court  
8 must engage in a choice of law analysis. Therefore, the Court will apply Washington law  
9 to Plaintiffs’ wrongful adoption claim. *Kelley*, 251 F.R.D. at 550 (“In the absence of a  
10 conflict, Washington law applies.”).

11 2. *Washington’s Statute Creating a Duty to Disclose Information in the Adoption*  
12 *Context*

13 In Washington, wrongful adoption claims arise from the failure to disclose certain  
14 medical or social history. *See* RCW 26.33.350 (creating a statutory duty to disclose  
15 adoptee’s medical/psychological history); RCW 26.33.380 (creating a statutory duty to  
16 disclose adoptee’s social history). Mr. Bosmann argues that only adoption placement  
17 agencies are liable under Washington’s adoption disclosure statutes. Dkt. # 20 at 9. Mr.  
18 Bosmann’s argument is based on *McKinney v. Washington*, in which the Washington  
19 Supreme Court granted adoptive parents a cause of action for negligent failure to meet  
20 the disclosure requirements under RCW 26.33.350.<sup>3</sup> *See McKinney v. Washington*, 134

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22 <sup>2</sup> The Court notes that Mr. Bosmann conspicuously failed to mention Tex. Fam. Code  
23 Ann. § 162.005, which appears to be similar to RCW 26.33.350. Section 162.005(d) states, in  
24 part, that “[i]f the child has been placed for adoption by a person or entity other than the  
25 department, a licensed child-placing agency, or the child’s parent or guardian, it is the duty of the  
26 person or entity who places the child for adoption to prepare the [report on the available health,  
social, educational, and genetic history of the child to be adopted].” Mr. Bosmann does not  
discuss how this statute may or may not compare to the Washington statute at issue, and the  
Court declines to do this work on his behalf.

27 <sup>3</sup> Prior to *McKinney*, Washington recognized “causes of action for fraud and intentional  
misrepresentation in failing to disclose pertinent information about an adoptive child[.]”

1 Wash. 2d 388, 389–90, 950 P.2d 461, 462 (1998). RCW 26.33.350 states, in relevant  
2 part,

3           Every person, firm, society, association, corporation, or state  
4           agency receiving, securing a home for, or otherwise caring for  
5           a minor child shall transmit to the prospective adopting parent  
6           prior to placement and shall make available to all persons with  
7           whom a child has been placed by adoption a complete medical  
8           report containing all known and available information  
9           concerning the mental, physical, and sensory handicaps of the  
10          child.

11 RCW 26.33.350(1).

12           The court in *McKinney* found that “the Legislature has established the duty owed  
13 by adoption placement agencies in RCW 26.33.350[.]” *McKinney*, 134 Wash. 2d at 396.  
14 That the court directed its order to the Department of Social and Health Services (DSHS)  
15 specifically, or to “adoption placement agencies” generally, is not reflective of the true  
16 reach of RCW 26.33.350. Rather, it reflects the fact that the plaintiffs brought suit  
17 against DSHS rather than another entity recognized by RCW 26.33.350.

18           If the Court were to adopt Mr. Bosmann’s restrictive reading of *McKinney*, then it  
19 would be effectively rewriting RCW 26.33.350. For if the Court only allowed suit  
20 against agencies, as defined by RCW 26.33.020, then it would be denying the  
21 Legislature’s clear wish for “every person, firm, society, association, [or] corporation” to  
22 assume the duty to disclose medical information to prospective adopting parents.  
23 Moreover, Mr. Bosmann notes that “Agency” is defined in RCW 26.33.020(7) as “any  
24 public or private association, corporation, or individual licensed or certified by the  
25 department as a child-placing agency . . . .” *See* Dkt. # 20 at 9. He appears to argue that,  
26 because *McKinney* and other cases discuss agencies as defined in this way, then the duty  
27 to disclose in RCW 26.33.350 must only apply to these agencies. That the remaining

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*McKinney*, 134 Wash. 2d at 394. *McKinney* expanded adoptive parents’ rights of action to  
include claims for the negligent failure to meet these disclosure requirements. *Id.* at 389-90.

1 terms in RCW 26.33.350(1)—“person, firm, society, association, corporation”—are not  
2 defined in RCW 26.33.020 does not negate their existence or render them meaningless.  
3 Importantly, when federal courts construe statutes, they do “so as to avoid rendering  
4 superfluous any parts thereof.” *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S.  
5 104, 112 (1991); *see also Hibbs v. Winn*, 542 U.S. 88, 101 (2004); *United States v.*  
6 *Menasche*, 348 U.S. 528, 538–539 (1955). As such, the Court declines to adopt Mr.  
7 Bosmann’s narrow reading of *McKinney* and RCW 26.33.350(1).<sup>4</sup>

8 The statutory duty to disclose in RCW 26.33.350 extends to Starfish and its board  
9 members. Therefore, Plaintiffs may assert their wrongful adoption claims against  
10 Starfish and its board members.

11 To bring claims against Defendants for failing to disclose C.M.’s medical  
12 information, Plaintiffs must establish that Starfish “breached its statutory duty of  
13 disclosure and that such failure to disclose proximately caused plaintiff’s damages.”  
14 *Price v. State*, 96 Wash. App. 604, 614–15, 980 P.2d 302, 308–09 (1999). Plaintiffs have  
15 met their burden. In their Complaint, Plaintiffs state that they knew about C.M.’s spina  
16 bifida but were left recklessly in the dark about a litany of other health issues from which  
17 she suffered. Dkt. # 1 (Complaint) at ¶¶ 3.03, 3.07, 4.12. Plaintiffs further state that  
18 Starfish and its Board were in possession of C.M.’s pertinent health information, *id.* at ¶¶  
19 3.08-3.16, and failed to disclose it, *id.* at ¶ 3.17. Plaintiffs also state that Starfish and its  
20 Board were grossly negligent in withholding the information in order to induce Plaintiffs  
21 to adopt C.M. because Defendants knew that this information was material to prospective  
22 parents. *Id.* at ¶¶ 3.19-3.21, 4.04. Had Plaintiffs known the extent of C.M.’s medical  
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25 <sup>4</sup> Mr. Bosmann claims that such an interpretation “would radically expand the holding of  
26 *McKinney* far beyond what the Washington Supreme Court or the Washington Legislature  
27 intended.” Dkt. # 27 at 5. The Court disagrees. Any other interpretation would undermine the  
Legislature’s careful drafting and assail the “strong public policy” grounds asserted by *McKinney*  
and *Gibbs v. Ernst*, 538 Pa. 193, 216, 647 A. 2d 882 (1994).

1 issues, they would not have adopted her. *Id.* at ¶ 3.24. As a result of their reliance on  
2 Defendants’ representations of C.M.’s medical information and subsequent adoption,  
3 Plaintiffs have suffered damages. *Id.* at ¶ 3.24. Therefore, based on the allegations set  
4 forth in the Complaint, Plaintiffs have stated a cause of action for wrongful adoption—  
5 under a gross negligence standard—against Starfish and its Board, including Mr.  
6 Bosmann.

7 Mr. Bosmann argues that Starfish is not liable under RCW 26.33.350 given its  
8 contractual releases. Dkt. # 20 at 11. He cites no authority suggesting that Starfish was  
9 capable of contracting out of a statutory duty to provide certain medical information, and  
10 the case he cites in the footnote of his reply brief focuses on “extra-contractual  
11 representations” and not statutory duties. *See* Dkt. # 27 at 5-5; *see also Petrobras Am.*  
12 *Inc. v. Union Oil Co. of Cal.*, 177 F. App’x 460, 462 (5th Cir. 2006). Though the  
13 agreement between Starfish and Plaintiffs states that it does not create a disclosure  
14 obligation, it is silent on whether it exculpates any party from a statutory duty to disclose  
15 information. *See* Dkt. # 21-1 at Exs. B, C, D. Based on the record before it and taking  
16 Plaintiffs’ allegations as true, the Court cannot find at this stage in the litigation that  
17 Starfish contracted out of its statutory duty—indeed, it does not appear that an  
18 exculpatory clause was included in any agreement between the parties—to disclose  
19 C.M.’s medical information to Plaintiffs.

20 Mr. Bosmann also argues that Plaintiffs did not adequately plead their causes of  
21 action against the individual defendants. Dkt. # 20 at 10-11. The Court disagrees.  
22 Plaintiffs clearly stated that they would refer to all defendants as “Starfish”, *see* Dkt. # 1  
23 (Complaint) at ¶ 3.01, and alleged all their claims against “Defendants”, *see id.* at ¶¶  
24 4.01-4.35. As a member of Starfish’s Board of Directors, the Court finds that Mr.  
25 Bosmann had notice through Plaintiffs’ Complaint about what he would be called upon to  
26 defend. *See Skaff v. Meridien N. Am. Beverly Hills, LLC*, 506 F.3d 832, 841 (9th Cir.  
27 2007) (finding that the defendant’s “argument ignores the purpose of a complaint under



1 Rule 8—to give the defendant fair notice of the factual basis of the claim and of the basis  
2 for the court’s jurisdiction. ‘Specific facts are not necessary . . . .’ [The defendant] would  
3 essentially impose a heightened pleading . . . even though the Supreme Court has  
4 repeatedly instructed us not to impose such heightened standards in the absence of an  
5 explicit requirement in a statute or federal rule.’’) (citations omitted). Therefore, the  
6 Court finds that Plaintiffs sufficiently pled their claims.

7 Along with their claim for gross negligence, Plaintiffs also assert claims for  
8 ordinary negligence. These claims fail as to Mr. Bosmann.

9 B. Negligence

10 Mr. Bosmann cannot be liable for ordinary negligence per RCW 4.24.264. Dkt. #  
11 20 at 12-13. RCW 4.24.64 states:

12 (1) Except as provided in subsection (2) of this section, a  
13 member of the board of directors or an officer of any nonprofit  
14 corporation is not individually liable for any discretionary  
15 decision or failure to make a discretionary decision within his  
16 or her official capacity as director or officer unless the decision  
17 or failure to decide constitutes gross negligence.

18 (2) Nothing in this section shall limit or modify in any manner  
19 the duties or liabilities of a director or officer of a corporation  
20 to the corporation or the corporation's members.

21 RCW 4.24.264. Plaintiffs counter without citing any authority that RCW 4.24.264 does  
22 not apply because Mr. Bosmann was not exercising discretionary authority. Dkt. # 29 at  
23 2-3.

24 “RCW 4.24.264(1) sets a gross negligence standard for liability of directors in the  
25 course of their official actions, while subsection (2) preserves any different statutory  
26 standard that might apply between directors and the corporation or its members.” *Waltz*  
27 *v. Tanager Estates Homeowner’s Ass’n*, 183 Wash. App. 85, 91, 332 P.3d 1133, 1135  
(2014). Plaintiffs do not allege that Mr. Bosmann was acting outside his official duties in  
allegedly failing to disclose C.M.’s medical information. As such, the Court dismisses

1 any claims against Mr. Bosmann that arise from ordinary negligence, including claims  
2 related to Mr. Bosmann's alleged negligence in failing to disclose medical information  
3 and negligent misrepresentation.

4 C. Fraud and Intentional Misrepresentation

5 Plaintiffs bring a claim for fraud and intentional misrepresentation regarding  
6 representations that Starfish allegedly made through its website and by intentionally  
7 withholding C.M.'s medical information. Dkt. # 1 (Complaint) at ¶¶ 4.05, 4.23. These  
8 claims are grounded in fraud and therefore must be pleaded with particularity. Fed. R.  
9 Civ. P. 9(b); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003)  
10 ("It is established law, in this circuit and elsewhere, that Rule 9(b)'s particularity  
11 requirement applies to state-law causes of action. '[W]hile a federal court will examine  
12 state law to determine whether the elements of fraud have been pled sufficiently to state a  
13 cause of action, the Rule 9(b) requirement that the circumstances of the fraud must be  
14 stated with particularity is a federally imposed rule.'") (quoting *Hayduk v. Lanna*, 775  
15 F.2d 441, 443(1st Cir. 1985)). To satisfy Rule 9(b)'s heightened pleading requirement,  
16 plaintiffs must assert allegations that are "specific enough to give defendants notice of the  
17 particular misconduct . . . so that they can defend against the charge and not just deny that  
18 they have done anything wrong." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th  
19 Cir. 2009) (quotations and citations omitted). "Averments of fraud must be accompanied  
20 by 'the who, what, when, where, and how' of the misconduct charged." *Vess*, 317 F.3d at  
21 1106 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

22 The elements of a fraud claim in Washington are:

- 23 (1) representation of an existing fact; (2) materiality; (3)  
24 falsity; (4) the speaker's knowledge of its falsity; (5) intent of  
25 the speaker that it should be acted upon by the plaintiff; (6)  
26 plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the  
truth of the representation; (8) plaintiff's right to rely upon it;  
and (9) damages suffered by the plaintiff.

27 *Adams v. King Cty.*, 164 Wash. 2d 640, 662, 192 P.3d 891, 902 (2008).

1 Plaintiffs have pled their fraud claims with particularity. Specifically, Plaintiffs  
2 claim that Starfish and its Board of Directors represented that C.M. suffered from spina  
3 bifida but withheld information about her other medical conditions. Dkt. # 1 (Complaint)  
4 at ¶¶ 3.07, 3.14. Plaintiffs claim that Defendants knew that C.M. had other health  
5 conditions, such as epilepsy. *Id.* at ¶¶ 3.08-3.12. Plaintiffs further allege that Defendants  
6 knew that this health information was material to prospective adopting parents like  
7 Plaintiffs. *Id.* at ¶¶ 3.20, 3.21. Plaintiffs aver that Defendants withheld the information  
8 from Plaintiffs, knowing that Plaintiffs would rightfully rely on the abridged medical  
9 record, so that Plaintiffs would adopt C.M. with limited knowledge. *Id.* at ¶¶ 3.17<sup>5</sup>, 3.19.  
10 As a result, Plaintiffs claim that they have already incurred more than \$500,000 in  
11 medical bills, and they estimate that this amount will continue to grow. *Id.* at ¶ 3.24.

12 Plaintiffs also allege a claim grounded in fraud and intentional misrepresentation  
13 with regard to Defendants’ representations on its website that Starfish “create[s] a  
14 medical history file for each child that details their history from the day they arrived to  
15 the day they were adopted.” *Id.* at ¶ 4.23. For the same reasons detailed above, Plaintiffs  
16 sufficiently describe a fraudulent scheme in which Defendants withheld information and  
17 therefore knowingly failed to create an adequate medical file for Plaintiffs to review in  
18 order to deceive prospective parents into an unviable adoption.

19 D. Intentional Infliction of Emotional Distress

20 Plaintiffs allege a claim for intentional infliction of emotional distress (IIED),  
21 stating that “Defendants engaged in extreme and outrageous behavior[.]” Dkt. # 1  
22 (Complaint) at ¶ 4.30. To survive a motion to dismiss, Plaintiffs’ Complaint must show  
23 that Defendants engaged in extreme and outrageous conduct that intentionally or  
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25 <sup>5</sup> Plaintiffs’ evidence includes emails from members of the Board who are speaking on  
26 behalf of the Board. *See, e.g.*, Dkt. # 1 (Complaint) at ¶ 3.17 (stating that “[t]he board gives you  
27 a receipt that we all ‘get it’ . . .”). Therefore, the Court finds that Plaintiffs specifically tied the  
alleged fraudulent behavior to the board of directors, including Mr. Bosmann.

1 recklessly inflicted emotions distress, and Plaintiffs actually suffered severe emotional  
2 distress as a result. *Kloepfel v. Bokor*, 149 Wash. 2d 192, 195, 66 P.3d 630, 632 (2003).  
3 Plaintiffs’ burden on this claim is high, requiring a showing of behavior “so outrageous in  
4 character, and so extreme in degree, as to go beyond all possible bounds of decency, and  
5 to be regarded as atrocious, and utterly intolerable in a civilized community.” *Id.* at 196  
6 (internal quotations and citations omitted). Though the alleged circumstances of this case  
7 are unfortunate and upsetting, they are similar to many wrongful adoption claims brought  
8 by adoptive parents. Were the Court to find that a claim for IIED exists based on the  
9 pleadings in this Complaint, it would effectively be authorizing a claim for IIED for any  
10 wrongful adoption lawsuit. Plaintiffs have not shown that Mr. Bosmann acted  
11 atrociously or in a way that is utterly intolerable. *See, e.g., id.* at 194 (defendant called  
12 the plaintiff’s “home 640 times, her work 100 times, and the homes of the men she knew  
13 numerous times as well.”). The Court does not find that Plaintiffs satisfied this burden  
14 and therefore grants the motion as to the IIED claim with leave to amend.

15 E. Respondeat Superior and Board of Director Liability

16 Plaintiffs’ final claims are titled “Respondeat Superior” and “Board of Director  
17 Liability.” Dkt. # 1 (Complaint) at ¶¶ 4.32, 4.33-4.35. However, as Mr. Bosmann  
18 alludes, these claims appear to be theories of liability that are encompassed by Plaintiffs’  
19 other claims. Therefore, the Court dismisses these causes of action to the extent that they  
20 have already been pled.

21 **IV. CONCLUSION**

22 For the foregoing reasons, the Court **GRANTS in part and DENIES in part**  
23 Defendants’ motion. Dkt. # 20. The Court **GRANTS** the motion as to Ms. Bosmann.  
24 The Court further **GRANTS** the motion with prejudice as to the claims for negligence,  
25 negligent misrepresentation, respondeat superior, and board of director liability alleged  
26 against Mr. Bosmann. The Court **GRANTS** the motion without prejudice as to  
27 Plaintiffs’ IIED claim against Mr. Bosmann. The Court **DENIES** the motion with regard

1 to the remaining claims. If Plaintiffs choose to do so, they may amend their Complaint  
2 within twenty-one (21) days from the date of this Order.

3 Dated this 8th day of February, 2018.

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7 The Honorable Richard A. Jones  
8 United States District Judge  
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